

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE TOBIAS T.)
) 2 CA-JV 2008-0112
) DEPARTMENT A
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 12263801

Honorable Virginia C. Kelly, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Ellen R. Brown

Tucson
Attorneys for State

Nuccio & Shirly, P.C.
By Jeanne Shirly

Tucson
Attorneys for Minor

PELANDER, Chief Judge.

¶1 Appellant Tobias T. was adjudicated delinquent after he admitted having committed assault and disorderly conduct. Following a restitution hearing, the juvenile court ordered Tobias to pay \$2,141.41 in restitution for the assault. He appeals from that order.

“We review a juvenile court’s restitution order for an abuse of discretion.” *In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007).

¶2 A juvenile court is obligated to order a juvenile to make full or partial restitution to the victim of offenses for which the juvenile has been adjudicated delinquent. A.R.S. § 8-344(A); *see also* Ariz. Const., art. 2, § 2.1(A)(8). The court “has discretion to set the restitution amount according to the facts of the case in order to make the victim whole.” *In re Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d 543, 548 (App. 2002). However, a victim may recover only economic losses incurred as a direct result of the juvenile’s delinquent conduct. *See Andrew C.*, 215 Ariz. 366, ¶ 9, 160 P.3d at 689 (applying test for determining restitution in criminal cases announced in *State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002)). “The burden of proof applicable to restitution is proof by a preponderance of the evidence.” *In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 118 (App. 2003).

¶3 Tobias does not dispute that his assault victim suffered a broken nose, fractures, and numbness in his face that had caused his mother to incur \$2,141.41 in medical bills and lost wages. He contends, however, there was insufficient evidence he had caused all of the victim’s injuries because it was undisputed the victim had been involved in a physical fight with another individual almost immediately after Tobias had assaulted him. Tobias argues there was “ample evidence that the victim’s injuries were caused by [that] subsequent fight.”

¶4 But we must view the evidence in the light most favorable to upholding the restitution order. *See Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d at 688. At the restitution

hearing, the victim's mother testified about what her son had told her about the assault: that Tobias had "cold-cocked him, and the first punch was straight in his nose"; after two more punches, the "blood started," and a friend "had to hold him up, . . . he couldn't see because his eyes hurt so bad and the pain was so bad that he couldn't see."¹ She also testified her son had reported he had not been hit "that hard" in the subsequent fight. And Tobias himself admitted having hit the victim twice in the face.

¶5 A video of the subsequent fight that had been captured with a witness's cellular telephone was admitted into evidence. The court stated:

I looked at the videotape, and that wasn't much of a fight, that was mostly like leaning over trying to protect his face, and [the victim] generally had his back to the person that was punching him after the first couple of attempts by [the person] to hit him, and as [the victim] came right back up from those first couple of blows, I don't see any nose-breaking blows there in those first instances, and after that he's bent over with his back to him, you know, with the other boy's arms wrapped around him.

¶6 Although Tobias argues the videotape constituted "credible evidence" supporting his claim that the victim's injuries were most likely caused by the subsequent fight, the juvenile court's contrary interpretation was reasonable. *See In re Pima County Juv. Action B-10489*, 151 Ariz. 335, 338, 727 P.2d 830, 833 (App. 1986) ("Appellate courts do not reweigh the evidence, but rather only look to determine if there is evidence to sustain the

¹The victim did not testify. However, hearsay evidence can be admissible at disposition hearings. *See In re Maricopa County Juv. Action No. JV-512016*, 186 Ariz. 414, 418, 923 P.2d 880, 884 (App. 1996); *see also In re Kevin A.*, 201 Ariz. 161, ¶ 7, 32 P.3d 1088, 1090 (App. 2001) (restitution part of disposition). And Tobias did not object to the mother's testimony.

ruling of the judge below.”). Further, the court was in the best position to measure the credibility of the testifying witnesses. *See In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994). Thus, we conclude reasonable evidence supported the court’s finding that Tobias caused the victim’s injuries.² *See In re Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 608-09, 925 P.2d 748, 749-50 (App. 1996) (upholding juvenile court’s restitution award for damage to victim’s car, although no direct evidence admitted showing cause of damage and juvenile claimed car “was already damaged when he came upon it abandoned on the side of the road” and must have “been damaged by ‘whoever stole it from [victim]’ initially”).

¶7 For the reasons stated, we affirm the order of restitution.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

PHILIP G. ESPINOSA, Judge

²We note, however, that the victim’s mother claimed both in her testimony and in her affidavit of loss that her total loss had been \$2,141.14, not \$2,141.41. The discrepancy is clearly a mere typographical error and inconsequential.